



**TESTIMONY OF PEGGY VENABLE**

**DIRECTOR**

**TEXAS CITIZENS FOR A SOUND ECONOMY**

**before the**

**SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER  
PROTECTION**

**COMMITTEE ON ENERGY AND COMMERCE**

**U.S. HOUSE OF REPRESENTATIVES**

**September 9, 2003**

**Testimony of Peggy Venable  
Director, Texas Citizens for a Sound Economy**

**Testimony Summary**

I am here in support of H.R. 2221, the "Fairness to Contact Lens Consumers Act," and represent 25,000 members of Texas Citizens for a Sound Economy (Texas CSE) and will also be speaking on behalf of our national organization, CSE, which has a membership of over 270,000 citizens. Our mission is to educate citizens on, and to promote the adoption of, free-market policies, which we believe inure to the benefit of consumers and citizens generally.

We applaud the "Fairness to Contact Lens Consumers Act" and its sponsors for introducing real competition and consumer choice to the contact lens market and working to eliminate the hurdles currently impeding the consumer's ability to realize the benefit of an open market.

This is an important issue to consumers. I have worked with our members and other Texas consumers and I am familiar with the regulatory hurdles which, though well intentioned, currently limit consumer choices. Consumers care about this issue, and we would like to pass legislation in Texas (where we have positive verification) to provide the relief consumers need and deserve. That is what I would like to address today—the challenges positive verification places on the consumer's ability to shop.

Consumers are best served when the prescriber has a set period of time in which to respond to the retailer. Failure to do so harms consumers financially and may be harmful to their ocular health.

With an ineffective verification process, only eye care professionals have the opportunity to fill the prescription, which they write. Medical doctors do not fill their own prescriptions. When I take – or call – my prescription in to a pharmacy or an online retailer, my doctor responds within a few hours if there are questions. There are inherent problems with the prescriber also being the retailer in a market that contains effective barriers to competition. Unfortunately, those problems have not been addressed by the professional board's self-policing practices. The legislation introduced by Rep. Burr would begin to address not only potential conflicts of interest, but also the larger question of competition and customer choice.

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Mr. Chairman, Members of the Committee, Ladies and Gentlemen. I am Peggy Venable, state director of Texas Citizens for a Sound Economy and represent the 25,000 members of Texas CSE. We are the state affiliate of the national organization, which has a membership of over 270,000 citizens. Citizens for a Sound Economy's mission is to educate citizens on, and to promote the adoption of, free-market policies, which we believe benefits consumers and citizens generally.

We applaud H.R. 2221, the "Fairness to Contact Lens Consumers Act," and its sponsors for introducing real competition and consumer choice into the contact lens market and working to eliminate the hurdles currently impeding the consumer's ability to realize the benefit of an open market in the purchase of their contact lenses.

This is an important issue to consumers. I have worked with our members and other Texas consumers and am familiar with the regulatory hurdles which, though originally well intentioned, currently limit consumer choices in Texas. Consumers care about this issue, and though some may not choose to purchase their contacts elsewhere, they want and deserve the opportunity to do so. Some will continue to purchase from

their eye care professional, others will opt to shop for their contacts. The consumers I've spoken with cite either price or convenience, or both, as considerations in their purchasing decision.

However, currently the contact lens consumer is often either unaware that they have the opportunity to shop for contact lenses or they are hampered in doing so due to the verification process requirements. Of those who do know they can take their prescriptions to a retailer, many are frustrated by barriers inherent in the positive verification process which is used in Texas.

Before a consumer can purchase contact lenses in Texas, the positive verification system requires the prescribing eye care professional to respond to a retailer's request to verify that a prescription is valid and current. Unfortunately, delays and failure to respond to the verification process thwart the ability of many to purchase contact lenses from competitive providers.

We would like to pass legislation in Texas to replace positive verification with passive verification similar to California's, which would provide the relief consumers need and deserve. That is what I would like to address today—the challenges positive verification places on the consumer's ability to shop.

During the last regular legislative session in Texas, which ended late May, CSE supported legislation which would have established a passive verification process. The proposal—similar to California laws—allowed a reasonable amount of time for a prescriber to respond, and if they did not respond after that period of time, the retailer would be able to assume the prescription was accurate (since it was not challenged by the prescriber) and fill the prescription. That legislation did not pass and was ardently

opposed by optometrists. Texas consumers seeking to shop for contact lenses are left with the positive verification process, which was limiting customer choice.

The current Texas process is not serving the consumer well. The Texas Board of Optometry (TBO) acknowledged 2,500 complaints from consumers who were unable to get positive verification for their prescriptions. Earlier this year, I personally talked to some of those consumers who had filed formal complaints and was told that they were either still wearing their old contacts—which I understand is potentially harmful to ocular health and an unfortunate consequence of the current law's limitation on consumer choice—or had gone to another optometrist, or had returned to their prescribing optometrist and had their prescription filled there.

I should note that of the over 2,500 complaints acknowledged by the TBO (though there are some indications that they had received thousands more complaints), surprisingly, their representative earlier this year said that they had found only two of them to be valid. We found this to be an outrageous and irresponsible dismissal of the complaints of consumers who could not gain access to their contact lens prescriptions. Many of those consumers I contacted were further outraged that the Board had not addressed their concerns.

Of the almost 100 consumers we personally contacted who were denied access to their prescriptions and had filed formal complaints, most told me that their complaints had either not been addressed; a few said they had been contacted by the TBO just days prior to the hearing saying more information was needed. This was frustrating for consumers and they felt the TBO was placing yet another hurdle in front of them, rather than providing them with answers and relief.

It is not my objective to impugn the optometrists of Texas, their association, or the Texas Board of Optometry. However, there exists a widespread practice of failing to verify the prescription, making competition moot. The lack of competition is harmful to the consumer and appears to reveal a potential conflict of interest on the part of the prescribing eye care professional.

It is our objective to find a remedy that allows consumers access to their prescriptions and lets them exercise their rights to purchase from the retailer of their choice. H.R. 2221 addresses that concern by requiring the eye care professional to provide patients with a copy of their prescription. But when the consumer decides to purchase online or over the phone, then the eye care professional must be asked to verify the prescription.

Consumers are best served when the prescriber has a set period of time in which they are required to respond to the retailer. Failure to do so harms consumers financially and may be harmful to their ocular health.

We have also gone on record recommending a two-year prescription rather than the one-year expiration period currently mandated in Texas law. That alone would save each Texas contact lens consumer around \$110 a year, the cost of an annual exam.

In summary, H.R. 2221 would provide relief to consumers and clarify the role of the optometrist as healthcare provider while making their role as potential retailer distinct and subject to competition. In a market with potential barriers to competition, they must be taken out of the position of being able to deny consumers a choice when purchasing contact lenses.

With an ineffective verification process, only eye care professionals have the opportunity to fill the prescription which they write. Medical doctors do not fill their own prescriptions. When I take – or call – my prescription into a pharmacy or an online retailer, my doctor responds within a few hours if there are questions.

There are inherent problems with the prescriber also being the retailer in a market that contains effective barriers to competition. Unfortunately, those problems have not been addressed in Texas by the professional board's self-policing practices. The legislation introduced by Rep. Burr would begin to address not only potential conflicts of interest, but also the larger question of competition and customer choice.

We support a passive verification process in which the optometrist has the opportunity and responsibility to review the prescription prior to it being filled by the retailer of the consumer's choice. If the optometrist or ophthalmologist fails to respond within a reasonable period of time, then the retailer should be able to assume the prescription is valid and fill the consumer's order.

This legislation opens the door to providing consumers that relief.

Thank you for the opportunity to appear before you today and share with you our experience in Texas.